

FIRST NOTICE OF COMMENT PERIOD

LSA Document #20-22

GREENHOUSE GAS EMISSIONS FROM EXISTING ELECTRIC GENERATING UNITS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules at [326 IAC 27](#) concerning guidelines for carbon dioxide emissions from existing electric utility generating units. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 27](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-4](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

On July 8, 2019, the United States Environmental Protection Agency (U.S. EPA) finalized the Affordable Clean Energy (ACE) rule (84 FR 32520). This rule was promulgated under Section 111 (42 U.S.C. 7411) of the Clean Air Act (CAA). In general, the ACE rule provides states with new requirements for reducing carbon dioxide (CO₂) emissions from existing coal-fired electric generating units (EGUs).

CAA Section 111 requires U.S. EPA to establish nationally uniform, technology-based standards for stationary sources of air pollution. These standards establish a consistent baseline for pollution control to which all facilities in the United States must adhere. CAA Section 111(b) establishes maximum emission levels called New Source Performance Standards for new and modified major stationary sources. The emission levels are determined by the best system of emission reduction (BSER) "adequately demonstrated", taking into account costs and any non-air-quality health, environmental, and energy requirement impacts. Section 111 directs U.S. EPA to determine what constitutes the BSER.

Section 111 also addresses existing stationary sources of pollution, which is the subject of the ACE rule. Section 111(d) requires U.S. EPA to promulgate regulations, which U.S. EPA has historically referred to as "emission guidelines". These emission guidelines establish binding requirements that states are required to address when they develop plans to regulate the existing sources in their jurisdictions. Specifically, states must establish standards of performance for existing sources reflecting the BSER, as determined by U.S. EPA.

The ACE rule establishes on-site heat rate improvement (HRI), or efficiency improvement, as the BSER for affected EGUs. Heat rate is a measure of the amount of energy required to generate a unit of electricity. The ACE rule applies to any electric utility steam generating unit that operates under the following conditions:

- Burned coal for more than 10% of the average annual heat input during the three previous calendar years.
- Commenced construction on or before January 8, 2014.
- Serves a generator capable of selling more than 25 megawatts to a utility power distribution system.
- Has a base load rating greater than 250 million British thermal units per hour heat input of fossil fuel, either alone or in combination with any other fuel.

IDEM has tentatively identified 35 units in Indiana that are affected by the ACE rule. U.S. EPA stated that it lacked adequate information to establish a BSER for other types of existing fossil-fuel-fired units.

The ACE rule does not establish a binding, numeric performance standard for CO₂ emissions from existing coal-fired units. Instead, states are required to evaluate and establish a standard of performance for specified sources in their state plans under CAA Section 111(d). These standards of performance must be permanent and enforceable.

After noting that many state and industry commenters requested a presumptive standard or additional clarity during the public comment period on the proposed rule, U.S. EPA specified the "level of emissions reductions achievable using the candidate technologies". To that end, the rule requires states to evaluate relevant EGUs on a unit-by-unit basis and determine the BSER for each individual unit using six candidate HRI technologies that have been identified by U.S. EPA, as well as additional operating and maintenance practices. The six identified technologies are:

- Neural Network/Intelligent Sootblowers
- Boiler Feed Pumps
- Air Heater and Duct Leakage Control
- Variable Frequency Drives
- Blade Path Upgrade (Steam Turbine)
- Redesign/Replace Economizer

The ACE rule requires states to submit detailed plans to U.S. EPA that establish standards of performance using an identified BSER for each affected unit by July 8, 2022.

To comply with the ACE rule, IDEM is proposing rulemaking that would codify the standards of performance for each affected unit in the form of pounds of CO₂ per kilowatt hour. This rule would be an essential component of Indiana's state plan under the ACE rule as it would demonstrate that the state's standards of performance are permanent and enforceable. IDEM will be soliciting information and working with affected utilities to determine BSER for each affected unit. Evaluation of disbenefits for pollutants with air quality standards will be considered. IDEM will also work in cooperation with the Office of Utility Consumer Counselor and the Indiana Utility Regulatory Commission.

In determining the BSER for each affected unit, IDEM will consider the cost of implementing the candidate HRI technologies, HRI technologies that have already been implemented at a particular facility, operating and maintenance practices that are currently employed at each facility, non-air-quality health and environmental impacts, energy requirements associated with implementing the candidate HRI technologies, and the anticipated life-cycle of the unit in question. This rule would also contain necessary record keeping and compliance provisions.

While state plans must be submitted to U.S. EPA by July 8, 2022, the ACE rule allows states to determine the appropriate compliance deadlines for affected units based on the standards of performance outlined in the state plan. However, states that choose a compliance schedule extending more than 24 months beyond the submission date of the state plan would have to specify "legally enforceable increments of progress for that source" in the state plan. IDEM will choose an appropriate compliance schedule based on information and input received from stakeholders and relevant entities during the rulemaking process.

In conjunction with the promulgation of the ACE rule, U.S. EPA also finalized two related, but separate, rules. One of these rules revised general implementing regulations under CAA Section 111. The revisions codify U.S. EPA's current interpretation of the CAA in that states have broad discretion to establish and apply emission standards consistent with the identified BSER. The other separate, but related, rule repealed the Clean Power Plan (CPP) (80 FR 64662). Unlike the ACE rule, the CPP set individual state targets for average emissions of CO₂ from existing sources with final target emissions to be met by 2030. The BSER was also based on HRI at individual EGUs; however, unlike the BSER under the ACE rule, which identifies six candidate technologies, under the CPP the BSER also included increased use of renewable energy and the use of natural gas combined-cycle power plants to replace coal-fired units. The CPP was finalized in August 2015, but it never went into effect due to a stay by the U.S. Supreme Court. Multiple states, cities, environmental groups, and other stakeholders have filed petitions for review of ACE. IDEM will continue to follow any court actions or changes made to the ACE rule and will adjust the rulemaking accordingly.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 326 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

Alternatives to Be Considered Within the Rulemaking

Alternative 1. IDEM determines the BSER for each unit affected by the ACE rule and codifies the standards of performance for each affected unit in the form of pounds of CO₂ per kilowatt hour.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No. However, federal regulations do require states to develop permanent and enforceable standards of performance as part of their state plans under the ACE rule.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is required under federal law.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. IDEM does not develop a rule as part of the required state plan. Under this alternative, U.S. EPA would develop a federal plan for Indiana limiting the options available for compliance.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

- 42 U.S.C. 7411 Standard of Performance for New Stationary Sources
- 40 CFR 51 Requirements for Preparation, Adoption, and Submittal of Implementation Plans
- 40 CFR 52 Approval and Promulgation of Implementation Plans
- 40 CFR 60 Standard of Performance for New Stationary Sources

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative may have a fiscal impact on some of the tentatively identified affected EGUs if IDEM identifies an HRI technology or operating and maintenance practice that would classify as the BSER under U.S. EPA rules. In evaluating the technologies and practices, IDEM will consider the

costs incurred. There is no fiscal impact above what is already required by federal law.

Potential Fiscal Impact of Alternative 2. This alternative may have a fiscal impact on some of the tentatively identified affected EGUs. Similar to alternative 1, U.S. EPA would also evaluate cost when selecting an HRI technology to achieve the BSER; however, Indiana would lose flexibility in implementation of the emission guidelines.

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on CTAP and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Katelyn Colclazier
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 431-1560
kcolclazier@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8921 or (800) 451-6027
emoorhou@idem.in.gov

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Seth Engdahl, Rules Development Branch, Office of Legal Counsel at (317) 234-9535 or (800) 451-6027 (in Indiana).

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
 - (2) The submission of suggestions for the development of draft rule language.
- Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #20-22 Affordable Clean Energy Rule
Seth Engdahl
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules

Development Branch at (317) 234-9535.

(3) By electronic mail to sengdahl@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than March 20, 2020. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Seth Engdahl, Rules Development Branch, Office of Legal Counsel, (317) 234-9535 or (800) 451-6027 (in Indiana).

Christine Pedersen, Section Chief
Rules Development Branch
Office of Legal Counsel

Posted: 02/19/2020 by Legislative Services Agency
An [html](#) version of this document.